

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King T5	Team: Team # 5	CCRB Case #: 200606700	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/13/2006 7:04 PM	Location of Incident: Beach 32nd Street and Sprayview Avenue	Precinct: 101	18 Mo. SOL 11/13/2007	EO SOL 11/13/2007	
Date/Time CV Reported Tue, 05/23/2006 2:56 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/23/2006 2:56 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Florio	29396	930165	101 PCT
2. POM Matthew Handelsman	12644	932771	101 PCT
3. SGT Carlos Fabara	01279	922317	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara supervised the stop of § 87(2)(b) and § 87(2)(b)	
B.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara supervised the searches of § 87(2)(b) and § 87(2)(b)	
C.POM John Florio	Abuse: PO John Florio searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Matthew Handelsman	Abuse: PO Matthew Handelsman searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	

Synopsis

At approximately 7:00 PM on May 13, 2006, § 87(2)(b) and his two sons – § 87(2)(b) (§ 87(2)(b) -old) and § 87(2)(b) (§ 87(2)(b) -old) – were parked in § 87(2)(b)'s Volkswagen Jetta in a vacant parking lot located at Beach 32nd Street and Sprayview Avenue in Queens. § 87(2)(b) exited the vehicle and publicly urinated. Immediately after this, Sgt. Carlos Fabara supervised the approach and stop of § 87(2)(b) and § 87(2)(b) (allegation A). PO John Florio, and PO Matthew Handelsman assisted in the stop of the civilians. During the stop, the officers searched § 87(2)(b) and his two sons (allegation B). In addition, PO Florio and PO Handelsman searched the vehicle after the civilians had exited the vehicle (allegations C and D). PO Florio issued § 87(2)(b) a summons for § 87(2)(b); no summons was issued to § 87(2)(b). A stop and frisk report was prepared for the stop of § 87(2)(b) § 87(2)(g)

Former CCRB Inv. Phil Weitzman and Inv. Daniel Bodah conducted the investigation of this complaint; the undersigned drafted the closing report.

Summary of Complaint

§ 87(2)(b) (*enclosure 10a-10I*)

§ 87(2)(b) a 6'1" 170-pound § 87(2)(b) -old African-American male, filed his complaint with the CCRB via telephone on May 23, 2006. He was interviewed at the CCRB on July 14, 2006. He was shown a photographic array on January 9, 2007; § 87(2)(b) identified PO Florio in the photographic array, but could not positively identify the other two officers. § 87(2)(g)

At approximately 7:00 PM on May 13, 2006, § 87(2)(b) borrowed a friend's green Volkswagen Jetta in order to drive his two sons, § 87(2)(b) (§ 87(2)(b) -old) and § 87(2)(b) (§ 87(2)(b) -old), to Rockaway Beach. § 87(2)(b) parked the car in an abandoned, vacant parking lot near Beach 32nd Street. § 87(2)(b) and his sons talked and watched the birds while sitting in the car. There were listening to music at a moderate level and it was still light outside. § 87(2)(b) sat in the back passenger's seat while § 87(2)(b) sat in the front passenger's seat. § 87(2)(b) sat in the driver's seat.

After about 10 minutes, § 87(2)(b) told § 87(2)(b) that he had to urinate. § 87(2)(b) asked if he could wait until they went up the block, but § 87(2)(b) said "no." § 87(2)(b) told him to go in some bushes roughly two and a half feet from the car. § 87(2)(b) exited the car § 87(2)(b) and § 87(2)(b) remained inside the car). As he began to urinate, a gray unmarked Chevy Impala with tinted windows quickly pulled up diagonally in front of § 87(2)(b)'s car, blocking him in. Three officers – Sgt. Carlos Fabara, PO John Florio, and PO Matthew Handelsman (identified by the investigation) – exited the vehicle. Sgt. Fabara went to the driver's side and asked § 87(2)(b) what he was doing there. § 87(2)(b) replied that he was hanging out with his kids and asked if that was a problem. PO Florio asked § 87(2)(b) what § 87(2)(b) was doing and § 87(2)(b) replied that he was his § 87(2)(b) -old son and needed to urinate immediately. PO Florio pointed out that there were cars driving by, which could have seen what § 87(2)(b) was doing. § 87(2)(b) conceded this point, but added that his son had to relieve himself and did so in the bushes when nobody was around. PO Florio then mentioned that there were a lot of stolen cars in the area. § 87(2)(b) responded that his car was not stolen, at which time Sgt. Fabara asked him for his license and registration. § 87(2)(b) had one of his sons (he could not recall which) obtain the information from the glove box and then handed it to Sgt. Fabara. The officers returned to their police car.

After a short time, the officers returned to § 87(2)(b)'s car. Sgt. Fabara came to the driver's side of the car along with PO Florio while PO Handelsman went to the passenger side of the car. PO Florio told § 87(2)(b) to get out of the car and § 87(2)(b) asked what was going on. PO Florio told § 87(2)(b) to "shut up" and also to back up. PO Florio then went around the car and he and PO Handelsman told § 87(2)(b) § 87(2)(b)'s sons to exit the car. Sgt. Fabara stood with § 87(2)(b) while PO Florio and PO Handelsman stood with § 87(2)(b)'s sons. PO Florio leaned into the front driver side of the car and searched under the steering wheel and driver's seat. PO Handelsman then leaned into and searched the back of the car from the passenger side. Sgt. Fabara never searched the vehicle. After about 10 seconds, the two officers got out of the car.

Sgt. Fabara then searched § 87(2)(b) though upon further questioning, § 87(2)(b) claimed that PO Florio searched him. PO Florio asked § 87(2)(b) if he had anything on him, to which § 87(2)(b) replied, “No, what do you mean? You want to search me, go ahead and search me.” PO Florio then placed his hands inside of § 87(2)(b)’s pockets and patted down his clothing. § 87(2)(b) noticed that his sons were also being searched at the same time. § 87(2)(b) could not see which officers were searching his sons. He complained, asking the officers what they were doing. Sgt. Fabara told him to “shut up.” After the searches (which lasted no more than 20 seconds), the officers returned to their car.

Shortly thereafter, Sgt. Fabara returned and issued § 87(2)(b) a summons for § 87(2)(b). § 87(2)(b) complained that he had not urinated and Sgt. Fabara responded that it was only a \$10 summons. § 87(2)(b) angrily asked why the officers searched his sons, but they did not answer.

§ 87(2)(b) (*enclosure 11a-11g*)

§ 87(2)(b) a 5’10” 173-pound § 87(2)(b)-old African-American male with black hair, was interviewed by the CCRB on July 14, 2006. He was shown photographic arrays on February 2, 2007; he did not recognize any officers in the arrays. His statements are summarized as follows.

According to § 87(2)(b) he, his father, and § 87(2)(b) went for a walk together prior to incident. After the walk, they parked in a vacant pavement lot near Beach 32nd Street. § 87(2)(b) got out and urinated in front of the car. A gray Impala pulled up in front of the car and three officers exited. Sgt. Fabara (identified by the investigation) obtained § 87(2)(b)’s license and registration – § 87(2)(b) indicated that he was the son who retrieved the registration from the glove compartment. The officers returned to their car and after five minutes had passed, the officers came back to § 87(2)(b)’s car. The officers ordered everyone out of the car and Sgt. Fabara searched under the front and back seats of the car on the driver’s side. One of the white male officers – § 87(2)(b)’s descriptions of the white male officers did not differentiate between the two officers – frisked § 87(2)(b) by patting down his legs and crotch; this officer also searched § 87(2)(b) by reaching into § 87(2)(b)’s front jean pockets. § 87(2)(b) believed the officer felt his keys and wallet while frisking him.

§ 87(2)(b) saw the other white male officer search § 87(2)(b) though he did not observe that officer go into any of § 87(2)(b)’s pockets. § 87(2)(b) did not describe the search. The searches lasted for approximately three minutes. After the searches, Sgt. Fabara issued § 87(2)(b) a summons for § 87(2)(b) s § 87(2)(b). § 87(2)(b) indicated that the officers did not tell § 87(2)(b) to “shut up,” but instead told him to “be quiet.”

§ 87(2)(b) (*enclosure 12a-12g*)

§ 87(2)(b) a 5’2” § 87(2)(b)-old African-American male with black hair, was interviewed by the CCRB on July 14, 2006. He was shown photographic arrays February 2, 2007. He did not recognize any of the officers in the arrays and actually misidentified two officers from the filler photographs. § 87(2)(b)’s descriptions of the subject officers also did not differentiate the two white male officers.

According to § 87(2)(b) they had been driving around the beach for a while when § 87(2)(b) had to use the bathroom. § 87(2)(b) stopped the vehicle in a vacant lot and § 87(2)(b) got out of the car to urinate. After doing so, he returned to the car. At that point, the officers came onto the scene in a four-door car, blocking § 87(2)(b)’s car. Sgt. Fabara asked for § 87(2)(b)’s license and registration. He then told § 87(2)(b) and his sons to get out of the car. One of the white male officers asked § 87(2)(b) what he was doing in the area and why. § 87(2)(b) responded that § 87(2)(b) had to use the bathroom. One of the white officers looked under the driver’s seat and cushions while the other white male officer searched the car’s backseats. One of the white officers then grabbed § 87(2)(b)’s wrists, patted his legs and chest, and then reached inside his two front pockets, which contained keys and a cellphone. The other white male officer “searched” § 87(2)(b) while Sgt. Fabara “searched” § 87(2)(b). § 87(2)(b) did not describe what he meant by “search.” § 87(2)(b) became angry and asked the officers why they searched his sons. The officers told him to “shut up.” The officers returned to their car but then came back to § 87(2)(b)’s car and issued him a summons.

Results of Investigation

PO John Florio (enclosure 13a-13g)

PO Florio, a 5’10” 175-pound § 87(2)(b)-old white male with brown hair, had the following memo book entries. At 7:04 PM, PO Florio stopped one male at Beach 32nd Street and Sprayview Avenue for

urinating in public and possible grand larceny auto (GLA). § 87(2)(b) with two kids in car urinated out of his car.

PO Florio prepared summons § 87(2)(b) which was issued to § 87(2)(b) for § 87(2)(b)

PO Florio prepared a stop and frisk report regarding his stop of § 87(2)(b). PO Florio indicated that § 87(2)(b) was issued a summons for § 87(2)(b). PO Florio listed the following as circumstances leading to the stop: actions indicative of acting as a lookout, furtive movements, and actions indicative of engaging in violent crimes. PO Florio indicated that § 87(2)(b) was frisked and indicated the following as the basis for the frisk: inappropriate attire/possibly concealing a weapon, furtive movements, and actions indicative of engaging in violent crimes.

PO Florio was interviewed by the CCRB on August 25, 2006. On May 13, 2006, PO Florio worked with Sgt. Fabara and PO Handelsman as part of the Operation Impact. At the time of the incident, PO Florio was driving the Chevy Impala the officers were using (auto 8801). While driving, PO Florio and the other officers noticed a car in an abandoned parking lot behind some weeds near the boardwalk. According to PO Florio, cars rarely park in the lot at that time. PO Florio also noted that in his three years at the 101st Precinct, he had frequently found abandoned cars and stolen cars in the vacant lot. As a result, the lot is considered to be a high GLA-prone area.

PO Florio pulled up in front of the parked car and noticed what appeared to be “steaming, bubbling” urine on the ground near the driver’s seat of the parked car. § 87(2)(b) (identified by name) was standing next to the driver’s door and PO Florio stated that he was suspicious of § 87(2)(b) stealing the car because § 87(2)(b) was standing outside of the car.

The officers exited their car, at which time PO Florio noticed another child standing at the back passenger’s side of the car, who was still urinating. PO Florio asked § 87(2)(b) for his license, which he provided. PO Florio also noticed a second child seated in the back seat of the car. § 87(2)(b) told the officers that he did not want to provide his insurance and registration, but when the officers asked him for the items, § 87(2)(b) provided them. § 87(2)(b) insisted that his son was only urinating and that that was the reason they had stopped there.

PO Florio returned to the car and conducted a warrant check, which came back negative. PO Florio then issued § 87(2)(b) a summons for § 87(2)(b). He told § 87(2)(b) that it was disgusting to use a public parking lot and that § 87(2)(b) should use a bathroom. § 87(2)(b) was upset and felt that he had not committed any violation. PO Florio could not recall if any of the civilians were frisked. PO Florio also did not recall searching the vehicle at any time. PO Florio could not recall what § 87(2)(b) was wearing, what actions he committed that were indicative of violent crimes, what furtive movements § 87(2)(b) made, or what actions of § 87(2)(b) were indicative of acting as a lookout.

PO Matthew Handelsman (enclosure 14a-14f)

PO Handelsman, a 6’1” 185-pound § 87(2)(b)-old white male with brown hair, had no memo book entries regarding this incident.

PO Handelsman was interviewed at the CCRB on September 20, 2006. PO Handelsman claimed that the parking lot where the incident occurred often has dumped stolen vehicles in it, though he indicated that he had never made a GLA arrest at that location. The officers observed § 87(2)(b) standing near the driver’s side window and stated that the officers decided to approach the vehicle to find out what was going on. As the officers pulled up to the car, they noticed that § 87(2)(b) was urinating and decided to stop him. § 87(2)(b) was facing towards his car with his back to the officers. They parked their vehicle in front of § 87(2)(b)s and exited their vehicle. PO Handelsman exited on the driver’s side, closer to § 87(2)(b). On the other side of § 87(2)(b)s vehicle, PO Handelsman saw one of § 87(2)(b)s sons urinating. A second child was sitting in the back passenger side seat. PO Handelsman approached § 87(2)(b) with another one of the officers, though he could not recall which. The third officer went to the passenger side of § 87(2)(b)s vehicle.

One of the officers asked § 87(2)(b) for his identification and the registration for the vehicle. § 87(2)(b) was “belligerent” and refused to provide his information. § 87(2)(b) repeatedly turned his body away from the officers, adjusting the front of his waistband several times. The officers told § 87(2)(b) to keep his hands where they could see them, but he did not comply. § 87(2)(b) attempted to walk away and was yelling, “This is bullshit.” He also claimed that he had been using the bathroom.

At that point, one of the officers frisked § 87(2)(b) though PO Handelsman could not recall who conducted the frisk. PO Handelsman claimed that it was a “unanimous” decision to frisk § 87(2)(b).

for safety reasons. PO Handelsman recalled that the subject officer frisked § 87(2)(b)'s waist, which only took about a second. The officers stated that they were only going to issue § 87(2)(b) a summons, at which point he provided his identification. PO Handelsman denied that any officer searched § 87(2)(b). § 87(2)(b) looked into the vehicle's glove compartment, the visors, and in between the front seats for the registration. PO Handelsman recalled a blanket bunched up on the backseat. During his search for the registration, § 87(2)(b) fussed with it two or three times. The officers could not see what was underneath the blanket and decided to look under it to make sure there was no weapon, which there was not. PO Handelsman did not recall who lifted the blanket, but he denied that he himself ever reached into the car.

According to PO Handelsman, the child sitting in the back of the car never exited and none of the officers ever touched or frisked/searched the children. PO Florio returned to the officers' car while PO Handelsman and Sgt. Fabara remained at § 87(2)(b)'s vehicle. PO Handelsman noted that § 87(2)(b) § 87(2)(b)'s standing outside of the car potentially indicated that he was acting as a lookout. PO Handelsman also noted that § 87(2)(b)'s furtive movements towards his waistband indicated that he might be engaging in violent crime by concealing a weapon. PO Handelsman did not know why no report was prepared regarding § 87(2)(b)'s son urinating in public. PO Florio conducted a warrant check, which came back negative, and the officers then issued § 87(2)(b) a summons.

Sgt. Carlos Fabara (enclosure 15a-15b)

Sgt. Fabara, a 5'11" 190-pound § 87(2)(b)-old Hispanic male with black hair, was interviewed at the CCRB on September 1, 2006. Sgt. Fabara concurred with PO Handelsman's claim that the officers observed § 87(2)(b) standing outside of the vehicle in the vacant lot, which is what first caught their attention. Sgt. Fabara claimed that the lot has lots of bugs, broken glass, and junk and that the lot has a high incidence of GLA; Sgt. Fabara also noted that there was little reason why anyone would want to be in the lot. It looked like § 87(2)(b) may have been stripping the vehicle. As a result, the officers decided to stop § 87(2)(b).

As the officers got closer, they observed § 87(2)(b) urinating in public and they also saw one of § 87(2)(b)'s sons standing outside the passenger side of the vehicle and urinating. A younger kid was sitting in the backseat. Sgt. Fabara believed that he approached the driver's side, where § 87(2)(b) was standing. The officers asked § 87(2)(b) for his identification and also asked him questions about what he was doing in the area and where he was going. Sgt. Fabara could not recall who asked the questions. § 87(2)(b) § 87(2)(b) was initially hostile and uncooperative, but eventually agreed to provide his license and the vehicle's registration. PO Florio went back to the officers' car and wrote a summons for § 87(2)(b) for § 87(2)(b). When § 87(2)(b) saw that he was going to be issued a summons, he stated that it was "bullshit" and claimed that he would file a complaint if issued a summons.

At one point, Sgt. Fabara asked § 87(2)(b) to stand in a particular area by the car, but § 87(2)(b) § 87(2)(b) kept turning his back and walking towards the car. He also kept putting his hands in his pockets and in front of him. Sgt. Fabara characterized these actions as being indicative of retrieving a weapon. Sgt. Fabara ordered § 87(2)(b) several times to keep his hands out of his pockets, though he did not comply. As a result, Sgt. Fabara became fearful that § 87(2)(b) had a weapon. One of the officers – Sgt. Fabara could not recall whom) frisked the front of § 87(2)(b)'s waistband, but no weapons were found. Sgt. Fabara denied ever reaching into § 87(2)(b)'s pockets and did not observe any other officer do so. Sgt. Fabara denied that any of the officers frisked § 87(2)(b)'s kids. Sgt. Fabara visually inspected the inside of the car from the driver's side, but saw nothing notable. He was unaware of any of the officers entering or reaching into the car. Once one of the officers handed § 87(2)(b) his summons, the incident concluded.

NYPD Records (enclosure 16a-16I)

The 101st Precinct stop and frisk log indicated that no stop and frisk reports were prepared regarding the stops of § 87(2)(b) and § 87(2)(b).

Disposition of Summons (enclosure 17f)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Criminal Conviction History (enclosure 17a-17f)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) and § 87(2)(b) are minors; their records are unavailable to the CCRB.

Civilian CCRB History (enclosures 5, 6, and 7)

This is the first and only CCRB complaint for § 87(2)(b) and his sons.

Officer CCRB History (enclosures 2a-2d, 3, and 4)

In his eight years with the NYPD, Sgt. Fabara has eight substantiated abuse of authority allegations. § 87(4-b) § 87(2)(g)

§ 87(2)(b). In CCRB case 200508693, he was given instructions for “premises entered/searched” and “refusal to provide name and shield.” In CCRB case 200512992, Sgt. Fabara was given a command discipline for “question and/or stopped.” Charges are pending for abuse of authority allegations that were substantiated in CCRB cases 200511684 (stop/question and frisk) and 200606723 (refusal to provide name/shield and frisk).

PO Handlesman resigned from the NYPD effective January 7, 2007. He had no prior substantiated CCRB allegations.

In his four years with the NYPD, PO Florio has two substantiated abuse of authority allegations in case 200504637 (question/stopped and vehicle search). He received instructions for the substantiated findings.

Conclusions and Recommendations

Officer Identification

The officers stated they were jointly responsible for the stop. Sgt. Fabara was the supervising officer and acknowledged he was aware of and participated in the stop. § 87(2)(g)

The civilians were unable to identify exactly which officer conducted which search of the civilians. Although the civilian statements indicated that the two white male officers (PO Florio and PO Handlesman) searched the two children, the statements did not indicate which officer frisked which civilian. The civilian statements also suggested that Sgt. Fabara was likely the officer who searched § 87(2)(b)

§ 87(2)(b) § 87(2)(g)

The civilian statements all indicated that the two white male officers (PO Florio and PO Handlesman) searched the vehicle while the civilians were standing outside of it. § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Undisputed Facts

One of § 87(2)(b)'s children § 87(2)(b) urinated in public. PO Florio issued § 87(2)(b) a summons for § 87(2)(b) but no summons was issued to § 87(2)(b)'s child. No arrest was made.

Disputed Issues

§ 87(2)(b) and his sons claimed that § 87(2)(b) was the only person who urinated; the officers claimed that § 87(2)(b) also urinated.

§ 87(2)(b) and his sons alleged that the officers frisked and searched each of them. PO Florio had no recollection of any of the civilians being frisked or searched. PO Handelsman and Sgt. Fabara only claimed that an unidentified officer frisked § 87(2)(b) they denied that § 87(2)(b) was searched or that his children were frisked and searched during the incident.

§ 87(2)(b) and his sons claimed that the two white male officers (PO Florio and PO Handlesman) entered the car after the civilians had exited it and searched the front and back seats. PO Florio and Sgt. Fabara denied that any officers searched the vehicle. PO Handlesman claimed that an

unidentified officer lifted up a blanket on the backseat of the car in order to make sure there was no weapon under the blanket; PO Handlesman claimed that one of § 87(2)(b)'s children was sitting in the backseat when this occurred.

Credibility

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Determination of Fact

The officers stopped § 87(2)(b) and his sons for § 87(2)(b). § 87(2)(g)
[REDACTED]

Allegations Not Pleaded

§ 87(2)(g)
[REDACTED]
§ 87(2)(g)
[REDACTED]

Allegation A. Abuse of Authority – Sgt. Carlos Fabara supervised the stop of § 87(2)(b)
[REDACTED] ***and*** § 87(2)(b)
[REDACTED]
§ 87(2)(g)
[REDACTED]

Allegation B. Abuse of Authority – Sgt. Carlos Fabara supervised the searches of § 87(2)(b)
[REDACTED] ***and*** § 87(2)(b)
[REDACTED]
While the civilians consistently stated that searches of each civilian occurred, the officers consistently denied that any searches occurred. § 87(2)(g)
[REDACTED]

Allegation C. Abuse of Authority – PO John Florio searched the car in which § 87(2)(b)
[REDACTED] ***and*** § 87(2)(b) ***were occupants.***

Allegation D. Abuse of Authority – PO Matthew Handelsman searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

According to Kamins' *New York State Search and Seizure*, a vehicle search occurs when officers breach the plane of the doorway once all of the civilians are outside of the vehicle (enclosure 1e-1f). Although the civilians claimed that the officers – specifically, the two white officers – searched the vehicle after the civilians had exited it, the officers either had no recollection of a vehicle search occurring (Sgt. Fabara and PO Florio) or claimed that one of the officers looked underneath a blanket in the back seat while one of the civilians was still in the vehicle (PO Handelsman's account). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: